

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of:)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	

**THIRD REPORT AND ORDER AND SECOND FURTHER NOTICE OF
PROPOSED RULE MAKING**

Comments by the New York City Department of Education (NYCDOE)

The following comments are submitted in response to the Commission's Third Report and Order and Second Further Notice of Proposed Rule Making, FCC 03-323 in Docket No. 02-6.

The New York City Department of Education (NYCDOE) is the largest public school district in the country. With more than 1.1 million students and 1,200 schools, it faces unique challenges related to its size and ongoing evolution. Participation in the E-rate Program, with all its complexities and uncertainties, continues to be a major challenge for this institution.

We wish to make clear that without the E-Rate program; the NYCDOE would be years behind in bringing Internet access to all students in their classrooms. While it is now common to see lessons that include access to resources on the Internet, without the generous discounts of this program, our schools would have only a limited number of students in a limited number of facilities making use of telecommunication technology. The ability to provide ubiquitous Internet access allows our teachers to plan, and students to benefit from a worldwide network of information.

We offer these comments in the spirit of improving the implementation of the E-rate Program for ourselves and all other applicants.

COMMENTS

General

- 1. The E-Rate application process continues to be overly complex, unclear, and indifferent to the unique circumstances of many applicants.**

Applying for E-rate discounts involves far more work hours than is indicated on the various forms. In fact, the process is ongoing throughout the entire year and consumes an increasing amount of school resources simply to apply and participate. Marshalling massive amounts of required data, addressing time sensitive reviews, and responding to numerous audits is a major undertaking for a school district the size of New York City's. We were hopeful from the inception of the program that rational modifications would make participation less complicated and burdensome for both the administrators and applicants. Changes in the program, regardless of their good intentions, have not improved the process.

The E-Rate application process is designed and calibrated on experiences with smaller school districts and does not address the requirements of the very large applicant. While applicants are encouraged to file electronically that process still does not permit a direct transfer of data that would significantly decrease the possibility of costly data input mistakes and possible fatal application errors. While we have repeatedly expressed our concerns regarding the development of the filing process, little has been done to improve the situation. To illustrate, we calculated that in one past filing year almost 19,000 entries that had to be retyped into the on-line system that frequently timed out during the session. This cumbersome reprocessing of large amounts of information was required even though we had the ability to more accurately transfer that data electronically.

We ask that the FCC review the current application process and consider making reasonable accommodations for large applicants. This will improve accuracy and reduce some of the onerous burdens of program participation. Further, we recommend that the FCC review other areas of the E-Rate program where large urban school districts are sometimes held to standards that make little sense and do not further the program's goal of reducing waste and creating more efficiency.

Discount Matrix

- 2. We support the effort to make reasonable adjustments in the methodology for more equitably distributing of E-Rate funding. However, we do not see an immediate need to re-calculate the discount matrix.**

Since the 2 out of 5 year rule for applying for services has yet to go into effect, it seems reasonable that this new restriction should be applied and assessed before considering modifying the discount matrix. This new rule, combined with the maturity of the program, should reduce the financial demand on the program and allow for the approval of applications at lower discount levels.

Therefore, we are opposed to changing the discount matrix at this time.

Competitive Bidding Process

3. From years of experience we find the 470 application process totally ineffective and an unnecessary administrative burden on the applicant. The posting of the 470 has not resulted in better pricing or more competition.

The E-Rate program has failed to fully recognize the fact that as a government entity, school districts are already bound by procurement rules designed to insure favorable pricing, encourage competition, and prevent fraud. By imposing another set of vaguely defined rules only complicates an already time consuming process. Unless the SLD wishes to mandate a procurement procedure for purchasing products and services under the E-rate program, we believe the school system should be allowed to follow its established procurement procedures.

Some of the recent guidance from the SLD regarding this issue has been confusing and does not take into account regional cost differences or the reality of the need to retain many vendors year to year as a more efficient and cost effective way to do business.

In the case of the New York City public schools, vendors with the resources to do work in our district have full access to our RFP and other procurement processes. The posting of the 470 application has not fulfilled its promise.

We recommend the elimination of the 470 process and suggest that applicants certify their own procurement policy and procedures. Further, a central registry of schools and libraries may be created for vendor contact information purposes only.

Wide Area Networks

4. Fixed dollar limits on installation costs in any given year discriminate against large applicants.

This is another decision where the impact on large school district applicants appears not to have been considered. Rather than setting a fixed limit on allowable installation costs, limiting these requests to a percentage of the overall cost would be fair for all applicants.

We recommend that applicants be permitted to apply for installation costs based upon a fair percentage of the total charges rather than an amount that is limited by a fix cap.

5. Recent rulings and comments with regard to eligibility and distinction of dark fiber, unlit fiber, and unused fiber are confusing. This entire category of services needs to be simplified.

The struggle for distinctions in this category should not result in rulings that are counterproductive to long term planning. For example, making unlit strands of fiber in facility raceways with lit fiber strands ineligible can force planning and purchasing decisions that are more costly in the long term.

We recommend that the FCC go further in its clarifications regarding fiber distinctions and be sensitive to their potential impact.

Recovery of funds

- 6. A clear policy needs to be established to waive the recovery of fees for telephone audits that recoup inappropriate charges against E-rate discounts. NYCDOE requests that the FCC address and approve its request for a waiver to return funding from incorrect telephone charges.**

The NYCDOE finds itself in the unusual position of having to make a appeal to return funds to the E-rate program. Several years ago we proactively sought an audit of telephone charges for more than 23 thousand circuits in more than 1600 school buildings. To effectively conduct this process the school system contracted with established firms that do audits of telephone charges for major corporations and other government entities. For their work, each of these vendors charges an average 24% commission on savings realized.

As a result of this multi-year effort, the telephone companies involved have reimbursed millions of dollars of funding. It was our reasonable expectation, based on conversations with SLD staff prior to the audits that we would return the savings to both the program and the school system after the audit commissions where paid. In effect, for every 1000 dollars recovered, the auditors would retain a \$250 fee and the remaining \$750 dollars would be disbursed with 78% going back to the SLD and 22% returned to the school system (reflecting our approved discount rate for priority one services).

We initiated this auditing process on our own to insure the correction of billing errors common in large institutions with many circuits, phones and accounts. The school system has neither the resources nor expertise to conduct such audits and therefore relies on proven experts to complete the job.

We are being asked to pick up the entire cost of the audit and return the original amount of the discount to the SLD. This is illogical, unfair, and a disincentive for applicants to monitor expenditures. In the example used above, NYCDOE would actually end up losing money if required to reimburse the SLD before paying the recovery commissions. It creates a situation where the only injured party is the applicant who made the good faith effort to prevent waste. At this point a request for a wavier has been submitted to the FCC for permission to return the net E-Rate funds recovered during these audits.

We strongly recommend that the FCC approve our request for waiver and accept the net return of funds uncovered during these telephone audits. Further, we believe that the program should make clear that reasonable auditing commissions should not be taxed solely on the applicant.

Record keeping Requirements

- 7. We support the requirement for applicants to retain documentation for possible audits and reviews. However, we believe that the FCC should be specific as to the types of documents that need to be retained and the areas for possible future audits.**

The NYCDOE has been a subject of numerous audits since the inception of the E-rate program. While we understand and accept the need for monitoring, every effort should be made to minimize the burdens imposed upon the applicants.

Specifically we recommend the following regarding future audits.

- a) Applicants need clear guidance on exactly what information needs to be retained for possible review.*
- b) General program audits should be fairly scheduled among all applicants and vendors.*
- c) Each auditing team should be required to know the findings of previous audits so that the applicant is not forced to continually review the same facts.*
- d) Several of our audits have lasted for months and required considerable hours of preparation, participation, and follow-up. Every effort should be made to minimize the timeframe of the audit.*
- e) Audit findings should be shared with the applicant. It makes no sense to audit and then deny the applicant from knowing what strengths and weaknesses were uncovered. Most of the audits we were involved in have been of no benefit to us in improving our participation in the program.*

Cost Effective Funding Requests

- 8. The establishment of non-binding pricing guidelines may be a useful tool for applicants, vendors and reviewers.**

While we support the idea of a non-binding pricing guideline, we believe that any pricing guideline must take into account regional differences in doing business. Such factors as prevailing wage requirements can create dramatic differences in what it costs different applicants to do the exact same project.

We support the creation of pricing guidelines for E-rate eligible equipment and services but caution that they must recognize regional differences and not impose unrealistic restrictions on the applicant purchases.

Registering of consultants

- 9. We appreciate the intent for registering E-rate consultants to prevent vendors from promoting their own interests above those of the applicant and program. However, we are concerned that this proposal may actually be harmful to applicants by denying them free technical assistance.**

Schools, school districts, and libraries need technical guidance and advice. Totally independent consultation is expensive and draws on the already limited funding available to compliment approved E-rate discounts. It is reasonable for applicants to get expert advice from vendor/partners already selected to do the work. This is a normal part of doing business. We believe that the proposal to register all consultants and require that they not be connected in any way with a participating vendor will unnecessarily deny needed resources to schools and libraries. This practice may even restrict the use of not-for-profit organizations that are established by vendors to provide free assistance.

Vendors, who have already been selected as a partner for the applicant, should not be precluded from providing technical assistance and advice. Since the program already requires a technology plan and an affirmation that what is being requested is needed to support the overall educational program, we believe it is not necessary to eliminate technical planning advice from those vendors involved in the program.

We recommend that any central registry of E-rate consultants not be used to bar legitimate free or paid consulting services including those from vendor/partners. However, we support a declaration that no consultant is allowed to assist in the application for discounts if they have the potential to gain from the approval of the application.

Prevention of Sub-units Filing E-rate Applications without the Expressed Permission of the Parent Authority.

- 10. Restricting sub-units of school districts from filing E-rate applications without permission of the parent authority is appropriate.**

Based upon the realities of telecommunication and network technologies, and issues of local funding and ongoing support, we agree that no subunits of the main applicant entity should be allowed to file an independent E-rate application without the permission of the central governing authority. This we believe makes sense as a means to further efficiency in technology planning and prevent redundant or unnecessary discount requests.

Technology Plan

- 11. It makes sense that funding requests be based upon a plan that goes beyond the funding year of the requests. Further, it is reasonable to expect that**

applicants have the resources to fully deploy and effectively use approved funding. However, going beyond those understandings is not an appropriate role for the SLD/FCC.

A technology plan is part of an overall educational plan for a school or school district. It should not be an isolated document and therefore, the FCC should not make demands that can impact or conflict with other elements of the comprehensive education plan. Outside entities making specific requirements without providing the necessary resources to do so, create insurmountable burdens. School and school district plans are monitored by educational authorities for their appropriateness. We believe the FCC should not get into the role of making specific plan requirements and deadlines. This practice will only confuse the educational planning process and create additional conflicts and burdens for schools.

We think it is appropriate for the FCC to require applicants to have a technology plan approved by the state educational authority. We oppose the FCC making further detailed planning requirements on schools.

Respectfully submitted,

By: _____
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